

1 Pursuant to this Court's Order re Parties' Proposed Form of Protective Order issued on
2 December 31, 2009, Plaintiff and Counterclaim Defendant Fortinet, Inc. ("Fortinet") and
3 Defendant and Counterclaim Plaintiff Palo Alto Networks, Inc. ("Palo Alto Networks") and
4 Defendant Patrick R. Brogan ("Brogan") (collectively Palo Alto Networks and Brogan are
5 "Defendants") hereby submit the following Proposed Stipulated Protective Order which the
6 parties believe is consistent with the Order of this Court.

7 1. PURPOSES AND LIMITATIONS

8 Disclosure and discovery activity in this action are likely to involve production of
9 confidential, proprietary, or private information for which special protection from public
10 disclosure and from use for any purpose other than prosecuting this litigation would be
11 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
12 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
13 blanket protections on all disclosures or responses to discovery and that the protection it affords
14 extends only to the limited information or items that are entitled under the applicable legal
15 principles to treatment as confidential. The parties further acknowledge, as set forth in Section
16 10, below, that this Stipulated Protective Order creates no entitlement to file confidential
17 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
18 and reflects the standards that will be applied when a party seeks permission from the court to
19 file material under seal.

20 2. DEFINITIONS

21 2.1 Party: any party to this action, including all of its officers, directors,
22 employees, consultants, retained experts, and outside counsel (and their support staff).

23 2.2 Disclosure or Discovery Material: all items or information, regardless of
24 the medium or manner generated, stored, or maintained (including, among other things,
25 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
26 responses to discovery in this matter.

27 2.3 "Confidential" Information or Items: information (regardless of how
28 generated, stored or maintained) or tangible things that qualify for protection under standards

developed under F.R.Civ.P. 26(c).

2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely sensitive “Confidential Information or Items” whose disclosure to another Party or non-party would create a substantial risk of serious injury that could not be avoided by less restrictive means.

2.5 “Highly Sensitive – Source Code” Information or Items: extremely sensitive computer source code, executable code, microcode, RTL, HDL, or other hardware description language whose disclosure to another Party or non-party would create a substantial risk of serious injury that could not be avoided by less restrictive means and that qualifies for protection under standards developed under F.R.Civ.P. 26(c).

2.6 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.7 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.8 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential — Attorneys’ Eyes Only.”

2.9 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential,” as “Highly Confidential – Attorneys’ Eyes Only,” or as “Highly Sensitive – Source Code.”

2.10 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.11 House Counsel: attorneys who are employees of a Party.

2.12 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.13 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or

1 of a competitor of a Party's and who, at the time of retention, is not anticipated to become an
 2 employee of a Party or a competitor of a Party's. This definition includes a professional jury or
 3 trial consultant retained in connection with this litigation.

4 2.14 Professional Vendors: persons or entities that provide litigation support
 5 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
 6 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
 7 subcontractors.

8 3. SCOPE

9 The protections conferred by this Stipulation and Order cover not only Protected Material
 10 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
 11 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
 12 parties or counsel to or in court or in other settings that might reveal Protected Material.

13 4. DURATION

14 Even after the termination of this litigation, the confidentiality obligations imposed by
 15 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
 16 order otherwise directs.

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.

19 Each Party or non-party that designates information or items for protection under this Order must
 20 take care to limit any such designation to specific material that qualifies under the appropriate
 21 standards. A Designating Party must take care to designate for protection only those parts of
 22 material, documents, items, or oral or written communications that qualify – so that other
 23 portions of the material, documents, items, or communications for which protection is not
 24 warranted are not swept unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that
 26 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
 27 unnecessarily encumber or retard the case development process, or to impose unnecessary
 28 expenses and burdens on other parties), expose the Designating Party to sanctions.

1 If it comes to a Party's or a non-party's attention that information or items that it
 2 designated for protection do not qualify for protection at all, or do not qualify for the level of
 3 protection initially asserted, that Party or non-party must promptly notify all other parties that it
 4 is withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 6 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or
 7 ordered, material that qualifies for protection under this Order must be clearly so designated
 8 before the material is disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (apart from transcripts of
 11 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
 12 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top
 13 of each page that contains protected material. If only a portion or portions of the material on a
 14 page qualifies for protection, the Producing Party also must clearly identify the protected
 15 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
 16 portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
 17 CONFIDENTIAL – ATTORNEYS' EYES ONLY").

18 A Party or non-party that makes original documents or materials available
 19 for inspection need not designate them for protection until after the inspecting Party has
 20 indicated which material it would like copied and produced. During the inspection and before
 21 the designation, all of the material made available for inspection shall be deemed "HIGHLY
 22 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified
 23 the documents it wants copied and produced, the Producing Party must determine which
 24 documents, or portions thereof, qualify for protection under this Order, then, before producing
 25 the specified documents, the Producing Party must affix the appropriate legend
 26 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") at the
 27 top of each page that contains Protected Material. If only a portion or portions of the material on
 28 a page qualifies for protection, the Producing Party also must clearly identify the protected

1 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
 2 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
 3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

4 (b) for testimony given in deposition or in other pretrial or trial
 5 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
 6 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
 7 and further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL –
 8 ATTORNEYS’ EYES ONLY” or as “HIGHLY SENSITIVE – SOURCE CODE.” When it is
 9 impractical to identify separately each portion of testimony that is entitled to protection, and
 10 when it appears that substantial portions of the testimony may qualify for protection, the Party or
 11 non-party that sponsors, offers, or gives the testimony may invoke on the record (before the
 12 deposition or proceeding is concluded) a right to have up to 20 days to identify the specific
 13 portions of the testimony as to which protection is sought and to specify the level of protection
 14 being asserted (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 15 ONLY,” or “HIGHLY SENSITIVE – SOURCE CODE”). Only those portions of the testimony
 16 that are appropriately designated for protection within the 20 days shall be covered by the
 17 provisions of this Stipulated Protective Order.

18 Transcript pages containing Protected Material must be separately bound
 19 by the court reporter, who must affix to the top of each such page the legend
 20 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
 21 “HIGHLY SENSITIVE – SOURCE CODE,” as instructed by the Party or non-party offering or
 22 sponsoring the witness or presenting the testimony.

23 (c) for information produced in some form other than documentary,
 24 and for any other tangible items, that the Producing Party affix in a prominent place on the
 25 exterior of the container or containers in which the information or item is stored the legend
 26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only
 27 portions of the information or item warrant protection, the Producing Party, to the extent
 28 practicable, shall identify the protected portions, specifying whether they qualify as

1 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

2 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
3 failure to designate qualified information or items as “Confidential,” “Highly Confidential –
4 Attorneys’ Eyes Only,” or “Highly Sensitive – Source Code” does not, standing alone, waive the
5 Designating Party’s right to secure protection under this Order for such material. If material is
6 appropriately designated as “Confidential,” “Highly Confidential – Attorneys’ Eyes Only,” or
7 “Highly Sensitive – Source Code” after the material was initially produced, the Receiving Party,
8 on timely notification of the designation, must make reasonable efforts to assure that the material
9 is treated in accordance with the provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
12 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
13 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
14 waive its right to challenge a confidentiality designation by electing not to mount a challenge
15 promptly after the original designation is disclosed.

16 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
17 Designating Party’s confidentiality designation must do so in good faith and must begin the
18 process by conferring directly (in voice to voice dialogue; other forms of communication are not
19 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must
20 explain the basis for its belief that the confidentiality designation was not proper and must give
21 the Designating Party an opportunity to review the designated material, to reconsider the
22 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
23 designation. A challenging Party may proceed to the next stage of the challenge process only if
24 it has engaged in this meet and confer process first.

25 6.3 Judicial Intervention. A Party that elects to press a challenge to a
26 confidentiality designation after considering the justification offered by the Designating Party
27 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule
28 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the

1 challenge. Each such motion must be accompanied by a competent declaration that affirms that
 2 the movant has complied with the meet and confer requirements imposed in the preceding
 3 paragraph and that sets forth with specificity the justification for the confidentiality designation
 4 that was given by the Designating Party in the meet and confer dialogue.

5 The burden of persuasion in any such challenge proceeding shall be on the
 6 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
 7 material in question the level of protection to which it is entitled under the Producing Party's
 8 designation.

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 11 disclosed or produced by another Party or by a non-party in connection with this case only for
 12 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
 13 disclosed only to the categories of persons and under the conditions described in this Order.
 14 When the litigation has been terminated, a Receiving Party must comply with the provisions of
 15 section 11, below (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a
 17 location and in a secure manner that ensures that access is limited to the persons authorized
 18 under this Order.

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 20 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
 21 Party may disclose any information or item designated CONFIDENTIAL only to:

22 (a) the Receiving Party's Outside Counsel of record in this action, as
 23 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
 24 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
 25 attached hereto as Exhibit A;

26 (b) the officers, directors, and employees (including House Counsel)
 27 of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who
 28 have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed;

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom

1 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
2 Bound by Protective Order” (Exhibit A); and

3 (e) the author of the document or the original source of the
4 information.

5 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

7 (a) Unless otherwise ordered by the court or agreed in writing by the
8 Designating Party, a Party that seeks to disclose to an “Expert” (as defined in this Order) any
9 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
10 EYES ONLY” first must make a written request to the Designating Party that (1) identifies the
11 specific HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to
12 disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or
13 her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the
14 Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has
15 received compensation for work in his or her areas of expertise or to whom the expert has
16 provided professional services at any time during the preceding five years, and (6) identifies (by
17 name and number of the case, filing date, and location of court) any litigation in connection with
18 which the Expert has provided any professional services during the preceding five years.

19 (b) A Party that makes a request and provides the information
20 specified in the preceding paragraph may disclose the subject Protected Material to the identified
21 Expert unless, within seven court days of delivering the request, the Party receives a written
22 objection from the Designating Party. Any such objection must set forth in detail the grounds on
23 which it is based.

24 (c) A Party that receives a timely written objection must meet and
25 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the
26 matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the
27 Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local
28 Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must

1 describe the circumstances with specificity, set forth in detail the reasons for which the
 2 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would
 3 entail and suggest any additional means that might be used to reduce that risk. In addition, any
 4 such motion must be accompanied by a competent declaration in which the movant describes the
 5 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and
 6 confer discussions) and sets forth the reasons advanced by the Designating Party for its refusal to
 7 approve the disclosure.

8 In any such proceeding the Party opposing disclosure to the Expert shall
 9 bear the burden of proving that the risk of harm that the disclosure would entail (under the
 10 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to
 11 its Expert.

12 8. COMPUTER SOURCE CODE AND OTHER SIMILAR INFORMATION.

13 8.1 Each party shall have the right to designate information or items entitled to
 14 protection under F.R.Civ.P. 2(c) and comprising computer source code, executable code,
 15 microcode, RTL, HDL or other hardware description language (collectively, "source code"), , as
 16 "HIGHLY SENSITIVE - SOURCE CODE." Information, documents and things so designated
 17 will be subject to all of the restrictions as material designated as "Highly Confidential –
 18 Attorneys' Eyes Only" and further will be subject to the following additional restrictions and
 19 provisions:

20 (a) Each party shall produce three (3) copies of its source code in
 21 searchable electronic form on CDs, DVDs, or hard drives bearing production identification
 22 numbers and marked as "HIGHLY SENSITIVE - SOURCE CODE." The Producing Party may
 23 produce said copies in an encrypted format. If the Receiving Party ships the encrypted media to
 24 another authorized location (e.g., a consultant or expert authorized to review confidential
 25 information under this protective order), the Receiving Party shall not ship the password to
 26 decrypt the media in the same package as the encrypted media.

27 (b) The source code will be viewed only on a non-networked computer
 28 in secure locked areas of the designated offices of the Receiving Party's outside counsel and the

1 offices of experts or consultants disclosed under paragraph 7.4, except as provided herein.

2 (c) Access to information designated “HIGHLY SENSITIVE -
3 SOURCE CODE” shall be limited to the persons described in paragraph 7.3. A Receiving Party
4 may include excerpts of source code in a pleading, exhibit, expert report, discovery document,
5 deposition transcript, other court document, or any drafts of these documents (“Source Code
6 Documents”); each excerpt of source code quoted in a Source Code Document shall be
7 insubstantial when compared to the entire source code produced by the Producing Party – as an
8 example, excerpts of approximately 25 to 40 lines in length would be allowed. Any and all such
9 printouts or photocopies shall be marked “HIGHLY SENSITIVE - SOURCE CODE.”

10 (d) If the Receiving Party or its experts or consultants makes printouts
11 or photocopies of portions of source code, the Receiving Party shall keep the printouts or
12 photocopies in a secured locked area in the office of the outside counsel or expert or consultant.
13 The Receiving Party may also temporarily keep the printouts or photocopies at: (i) the sites
14 where any depositions relating to the source code are taken for the dates associated with the
15 taking of the deposition; (ii) the court; or (iii) any intermediate location reasonably necessary to
16 transport the information (e.g., a hotel prior to a deposition).

17 (e) To the extent portions of source code are quoted in a Source Code
18 Document, either (1) the entire document will be stamped and treated as “HIGHLY SENSITIVE
19 - SOURCE CODE” or (2) those pages containing quoted source code will be separately bound,
20 and stamped and treated as “HIGHLY SENSITIVE - SOURCE CODE.”

21 (f) As set forth above, source code shall be viewed within the
22 designated United States offices of outside counsel or the offices for experts or consultants
23 disclosed under paragraph 7.4 for the Receiving Party except as set forth herein. However, to the
24 extent portions of source code are quoted in a Source Code Document, the persons described in
25 paragraph 7.3, shall be permitted to store and access Source Code Documents on a computer and
26 on a computer network that limits access to only necessary viewers.

27 (g) If any party intends to offer any evidence at trial based on the
28 materials designated under paragraph 8.1, the party shall request that the court take appropriate

1 measures to preserve the confidentiality of the designated materials to the extent reasonably
2 practicable.

3 8.2 Within 30 days of the conclusion of the litigation:

4 (a) All copies of materials designated under paragraph 8.1 must be
5 returned to the Producing Party or provide certification of destruction.

6 (b) Notwithstanding the provisions above, outside counsel may retain
7 for archive purposes one (1) magnetic and one (1) paper copy of all pleadings, including but not
8 limited to discovery responses and deposition transcripts, exchanged by the parties or filed with
9 the court that contain source code excerpts.

10 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
11 OTHER LITIGATION.

12 If a Receiving Party is served with a subpoena or an order issued in other
13 litigation that would compel disclosure of any information or items designated in this action as
14 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or
15 "HIGHLY SENSITIVE – SOURCE CODE," the Receiving Party must so notify the Designating
16 Party, in writing (by fax, if possible) immediately and in no event more than three court days
17 after receiving the subpoena or order. Such notification must include a copy of the subpoena or
18 court order.

19 The Receiving Party also must immediately inform in writing the Party who
20 caused the subpoena or order to issue in the other litigation that some or all the material covered
21 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party
22 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action
23 that caused the subpoena or order to issue.

24 The purpose of imposing these duties is to alert the interested parties to the
25 existence of this Protective Order and to afford the Designating Party in this case an opportunity
26 to try to protect its confidentiality interests in the court from which the subpoena or order issued.
27 The Designating Party shall bear the burdens and the expenses of seeking protection in that court
28 of its confidential material – and nothing in these provisions should be construed as authorizing

1 or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

2 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
4 Material to any person or in any circumstance not authorized under this Stipulated Protective
5 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
6 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
7 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
8 this Order, and (d) request such person or persons to execute the “Acknowledgment and
9 Agreement to Be Bound” that is attached hereto as Exhibit A.

10 11. INADVERTENT DISCLOSURE OF PRIVILEGED OR WORK PRODUCT
11 INFORMATION

12 Each party shall make efforts that are “reasonably designed” to protect its privileged
13 materials. *See Gomez v. Vernon*, 255 F.3d 1118, 1131-32 (9th Cir. 2001). What constitutes
14 efforts that are reasonably designed to protect privileged materials depends on the circumstances;
15 the law does not require “strenuous or Herculean efforts,” just “reasonable efforts.” *See, e.g.,*
16 *Hynix Semiconductor, Inc. v. Rambus, Inc.*, 2008 WL 350641, *1-*2 (N.D. Cal., Feb. 2, 2008);
17 *see also*, Fed. R. Civ. Pro. 26(f)(3) advisory committee’s notes to 2006 amendments (discussing
18 the substantial costs and delays that can result from attempts to avoid waiving privilege,
19 particularly when discovery of electronic information is involved). When a particular Rule 34
20 request requires a production or inspection that is too voluminous, expedited or complex (such as
21 certain electronic productions) to allow for an adequate pre-production review, the parties may
22 enter into non-waiver agreements for that particular production. If the requesting party is
23 unwilling to enter into such an agreement, the Producing Party may move the court for a non-
24 waiver order.

25 In the event that, despite reasonable efforts, a Producing Party discovers that it has
26 inadvertently produced privileged materials, then within 30 calendar days the Producing Party
27 shall notify the Receiving Party that the document(s) or materials should have been withheld on
28 grounds of privilege. After the Receiving Party receives this notice from the Producing Party

1 under this paragraph, the Receiving Party shall not disclose or release the inadvertently produced
2 material to any person or entity pending resolution of the Producing Party's claim of privilege.
3 The parties shall hold a meet and confer, as defined in Civil Local Rule 1-5(n), as soon as
4 reasonably possible after a notice of inadvertent production. If the Producing Party and
5 Receiving Party agree that the inadvertently produced material is privileged, and was disclosed
6 despite efforts by the Producing Party that were "reasonably designed" to protect the materials,
7 then the Receiving Party shall return or certify the destruction of all copies (including
8 summaries) of such material. If no agreement is reached, then within 10 court days after the
9 meet and confer, the Producing Party must seek a ruling from this court to establish that the
10 material is privileged and that the Producing Party did not waive the privilege by inadvertently
11 producing the material. If the Producing Party seeks such a ruling, the Receiving Party shall not
12 disclose or release the inadvertently produced material to any person or entity pending the
13 court's ruling on the Producing Party's motion.

14 12. FILING PROTECTED MATERIAL. Without written permission from the
15 Designating Party or a court order secured after appropriate notice to all interested persons, a
16 Party may not file in the public record in this action any Protected Material. A Party that seeks
17 to file under seal any Protected Material must comply with Civil Local Rule 79-5.

18 13. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
19 Producing Party, within sixty days after the final termination of this action, each Receiving Party
20 must return all Protected Material to the Producing Party. As used in this subdivision, "all
21 Protected Material" includes all copies, abstracts, compilations, summaries or any other form of
22 reproducing or capturing any of the Protected Material. With permission in writing from the
23 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
24 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party
25 must submit a written certification to the Producing Party (and, if not the same person or entity,
26 to the Designating Party) by the sixty day deadline that identifies (by category, where
27 appropriate) all the Protected Material that was returned or destroyed and that affirms that the
28 Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms

of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

14. MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: March 2, 2010

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Stefani E. Shanberg
Stefani E. Shanberg

Attorneys for Plaintiff and Counterclaim Defendant
FORTINET, INC.

Dated: March 2, 2010

DURIE TANGRI LLP

By: /s/ Ryan M. Kent
Ryan M. Kent

Attorneys for Defendants and Counterclaim Plaintiff
PALO ALTO NETWORKS, INC. AND PATRICK R.
BROGAN

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: Nov. 8, 2010


PATRICIA V. TRUMBULL
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Fortinet, Inc. v. Palo Alto Networks, Inc. et al.*, Case No. 5:09-CV-00036-RMW. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]